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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA
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9 UNITED STATES OF AMERICA,
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11 Plaintiff,

12 v.
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14 KYLE ANDREW EVERHART,
15

16 Defendant.

17 CASE NO. CR14-5275 BHS
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19 ORDER DENYING
20 DEFENDANT'S MOTION
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22 This matter comes before the Court on Defendant Kyle Everhart's ("Everhart")
23 motion to allow independent test of pills (Dkt. 26).

24 On September 23, 2014, the Court began a two day trial on the Government's
25 charge against Everhart for possession with intent to distribute. Cause No. 13-5512, Dkt.
26 112. On September 24, 2014, the jury returned a verdict of guilty and specifically found
27 that the offense involved more than 500 grams or more of methamphetamine. *Id.*, Dkt.
28 120.

29 On October 27, 2014, Everhart filed a motion requesting that the Court order an
30 independent test of all the pills found during Everhart's arrest. Dkt. 26. Everhart argues
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1 that only small amount of pills were tested before trial and that the remaining pills should
2 be tested to determine the exact amount of methamphetamine for purposes of sentencing.
3 *Id.* On November 3, 2014, the Government responded and argued that the jury's finding
4 may only be challenged in a Rule 29 motion, which Everhart did not include in his
5 previous Rule 29 motion. Dkt. 27. The Court agrees with the Government. Therefore,
6 the Court **DENIES** Everhart's motion (Dkt. 26).

7 **IT IS SO ORDERED.**

8 Dated this 21st day of November, 2014.

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12 BENJAMIN H. SETTLE
United States District Judge
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